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No. ———

In The

Supreme Court of the United States

IN RE: BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT,

Petitioner.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To date, at least seventeen class action suits, along with many individual lawsuits, have been filed alleging that the Board of Commissioners of the Orleans Levee District and other defendants are responsible for $200 billion in damages as a result of the levee breaches, which caused catastrophic flooding in the City of New Orleans and portions of Jefferson Parish. The questions presented concern the denial of the defendant's motion to disqualify all of the judges on the United States District Court for the Eastern District of Louisiana under 28 U.S.C. §455(a) and §455(b)(4). Specifically, the questions presented are:

1. Whether §455(a) or §455(b)(4) require that all judges in the Eastern District of Louisiana be disqualified when (1) the case involves responsibility for flood damage during Hurricane Katrina, and (2) when all of the judges were directly and substantially impacted by the flooding.

2. Whether §455(a) or §455(b)(4) require that a procedure exist whereby a party can move to disqualify all of the judges in a district when all of the judges are directly and substantially affected by the events giving rise to the lawsuit.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are listed beginning at Appendix p. 26 to this petition.

RULE 29.6 STATEMENT

Petitioner, the Board of Commissioners of the Orleans Levee District is a governmental entity.

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OPINIONS BELOW

The unpublished order of the United States Court of Appeals for the Fifth Circuit, issued on May 23, 2006, denying the petitions for a writ of mandamus to recuse the judges on the United States District Court for the Eastern District of Louisiana is attached as Appendix (hereafter "App.") at 1. The unpublished order of the United States Court of Appeals for the Fifth Circuit, issued on June 21, 2006, denying the petition for rehearing and rehearing en banc is attached as App. 25.

The order of the United States District Court for the Eastern District of Louisiana denying the Motion to Disqualify Judge, entered May 4, 2006, is reported at 431 F.Supp.2d 639 (E.D. La. 2006), and is attached at App. 2.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Fifth Circuit dated May 23, 2006, pursuant to 28 U.S.C. §1254. The United States Court of Appeals for the Fifth Circuit denied rehearing and rehearing en banc on June 21, 2006.

STATUTORY PROVISIONS INVOLVED

The pertinent provision is 28 U.S.C. §455, which provides:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

INTRODUCTION

This matter concerns litigation to determine liability for the failure of levees and floodwalls following Hurricane Katrina, which contributed to the flooding that devastated New Orleans in the wake of the storm. This case involves over 17 class action suits and a large number of individual actions that have been filed against the defendants seeking over $200 billion in damages.

Defendants, including Petitioner Board of Commissions of the Orleans Levee District ("Orleans Levee District"), moved to recuse all of the judges on the United States District Court for the Eastern District of Louisiana pursuant to 28 U.S.C. §455. The district court held that there is no procedure for disqualifying all of the judges within the district and that the defendants had to file a motion to individually disqualify any judge assigned the cases. The defendants then moved to disqualify the district court judge and the magistrate judge who had been assigned to hear the consolidated cases. These motions were denied. The defendants then unsuccessfully sought a writ of mandamus to the United States Court of Appeals for the Fifth Circuit.

Catastrophic events arise where all in a community are personally affected. The tragic bombing of the federal building in Oklahoma City, Oklahoma and Hurricane Katrina are both examples of this. The United States Court of Appeals for the Tenth Circuit ordered the recusal of all of the district court judges in Oklahoma City in the

former case. *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995). The court of appeals explained that all the judges in the district were affected, directly or indirectly, and that avoiding the appearance of impropriety required recusal of all of the federal judges in the Western District of Oklahoma. *Id.* at 352.

In sharp contrast, the United States Court of Appeals for the Fifth Circuit affirmed the district court's holding that there is no procedure for "en banc" recusal of all of the district judges and that no recusal was warranted in this case. App. at 2. The district court judge focused not on the appearance of impartiality, but instead rejected disqualification by insisting that he "can and will decide each and every issue in this case fairly and impartially." App. at 22.

It is important for this Court to grant review and to clarify how disqualification should be handled in such cases of catastrophic events significantly affecting all of the judges in a district. It is precisely in such cases, because of the enormous stakes and the great public attention, that the appearance of impartiality guaranteed by 28 U.S.C. §455 is most important.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Background

The flooding following Hurricane Katrina's landfall on August 29, 2005 – allegedly caused by the failure of the city's hurricane protection levees – has affected everyone in and around New Orleans in ways impossible to quantify and difficult to comprehend. The storm and its accompanying floodwaters and destruction killed more than 1,000

Louisiana residents. *See* Associated Press, *Half a Year Later, New Orleans is Far From Whole*, February 25, 2006. Among the hundreds of thousands of New Orleans residents forced to evacuate, many have been permanently displaced by severe damage to or loss to their homes. *See McWaters v. FEMA*, 408 F.Supp.2d 221, 224-25 (E.D. La. 2005).

Those who remained or have since returned still contend daily with the consequences of the flooding, including the loss of basic amenities and necessities. A recent report of the Brookings Institution in August 2006 found:

1. Only 17 percent of buses and 49 percent of public transportation routes are operational in the New Orleans metropolitan area.
2. Only 44 percent of retail food establishments are open in the New Orleans metropolitan area.
3. In some parishes 0 or 50 percent of major hospitals are operational.
4. Although 95 percent and 97 percent of former customers in New Orleans have access to electricity and gas service respectively, only 60 percent and 41 percent of former customers are using the service.

Amy Liu, et al., Katrina Index: Tracking Variables of Post-Katrina Recovery 6-7, 43 (Aug. 8, 2006).

Another report of the Brookings Institute noted that "[r]egular service disruptions and increasing levels of crime have created daily frustrations, anxieties, and inconveniences for families and businesses." Amy Liu, Building a Better New Orleans: A Review Of and Plan for Progress One Year After Hurricane Katrina 34-35 (2006).

The District Court for the Eastern District of Louisiana, located roughly midway between the Louisiana Superdome and the Ernest N. Morial Convention Center, did not escape the effects of the floodwaters and surrounding chaos. Although the courthouse did not suffer flood damage, floodwaters reached its steps, and the building suffered the debilitating effects of the flooding – losing electric, sewage, and water service. *See* Office of Pub. Affairs, Office of the U.S. Courts, *Courts Regroup After Katrina*, Third Branch, at 1, 4-5. As a result of the flooding, power outages, lack of public utilities, unreliable mail service, and civil unrest that followed Hurricane Katrina, the Eastern District's courthouse was rendered useless to members of the bench and their staffs. Once the floodwaters receded, the court retrieved some computer equipment, but the unstable situation in the city required court personnel to be accompanied by armed United States Marshals for their trips to the courthouse. *See id.* at 3.

Situated as it was "in an evacuated city with a damaged infrastructure," the district court's operations were suspended and shifted outside the city. *See Courts Regroup After Katrina*, *supra*, at 4; Susan Finch, *U.S. Court Nearly Ready to Make Return to N.O.*, Times-Picayune, October 25, 2005, at B1. Initially, the court was required to keep its operations within the district pursuant to 28 U.S.C. §98(a) and thus operated out of the tiny Houma courthouse, which was 58 miles from New Orleans and had barely enough room for a few staff. Congress then passed legislation to grant special authority to operate the district court temporarily outside the district. Federal Judiciary Emergency Special Sessions Act of 2005, Pub.L. No. 109-63 (2005). As a result, the judges and staff relocated yet again, to Baton Rouge, Lafayette, and even Houston, 350

miles away. *See Courts Regroup After Katrina*, *supra*, at 5; Associated Press, *Federal Vioxx Cases Moving to Houston Due to Katrina*, Sept. 6, 2005.

Two months passed before the courthouse reopened on November 1, 2005. *See* Orde- Terminating Suspension of Deadlines & Delays, November 3, 2005. Even then, the court yielded a share of its limited space to state courts that are still displaced from their own facilities. *See* Associated Press, *State Courts to Use Federal Building in New Orleans*, December 5, 2005. Every judge and every employee at the court must deal every day with the challenges of working in a city that suffered unprecedented damage to its infrastructure.

Beyond the immediate impact on the courthouse itself, the Eastern District judges, along with their staffs, continue to share in the loss, suffering, and disruption brought about by post-Katrina flooding. Many court personnel experienced flooding in their homes or those of their families. All suffered the tremendous burden of long-term relocation.

Litigation over the levee breaches

This case involves over 17 class action suits and numerous individual lawsuits which have been consolidated after having been filed against the Board of Commissioners of the Orleans Levee District and other defendants. Plaintiffs are seeking over $200 billion in damages. In each of the lawsuits, plaintiffs allege that defendants negligently designed or conducted construction, demolition, and repair activities on or near the levees and floodwalls bordering the 17th Street, London Avenue, and Industrial Canals. Plaintiffs claim that this

negligence caused or contributed to the failure of the levees and floodwalls, without which the "subsequent inundation of the city with water could not have occurred." Bertholet Compl., ¶37. Petitioner Orleans Levee District has been sued because of its alleged negligence in maintaining the levees under its control.

At least 17 of the complaints are class action suits on behalf of all who were injured as a result of the flooding resulting from the breach of the levees following Hurricane Katrina. Many of the complaints define the class to be "[a]ll residents, domiciliaries, and property owners of the Parishes of Orleans and Jefferson in the State of Louisiana who sustained damages as a result of water intrusion caused by the failure of the hurricane protection levees and flood walls in New Orleans, Louisiana on or about August 29, 2005 and thereafter." Bertholet Compl., ¶30. Another complaint defines the class action to be "[a]ll residents, domiciliaries, and property owners of the Parishes of Orleans and Jefferson, in the State of Louisiana, whose persons or property were or may hereafter be damaged by flooding caused by the failure of the hurricane protection levees and floodwalls." Tauzin First Supp. & Am. Compl., ¶13. The complaint seeks monetary relief for Jefferson and Orleans Parish residents who have suffered or may suffer, among other things, mental or emotional distress, "inconvenience," or fear of future injury as a result of Hurricane Katrina's demolition of levees and floodwalls. *See, e.g.*, Tauzin Am. Compl., ¶¶13, 40. Thus, all of the judges and court staff in the Eastern District of Louisiana are members of these putative classes for all have surely suffered "inconvenience" and "distress" as a result of the tragic flooding of New Orleans.

These lawsuits were initially assigned to Judge Porteous. Judge Porteous recused himself because his adult son suffered flooding as a result of the levee breaches.

In fact, many of the judges in the Eastern District of Louisiana have recused themselves from hearing other cases assigned to them arising out of claims stemming from Hurricane Katrina. For example, Judge Jay Zainey recused himself from hearing an individual action arising from the breaches to the levee. In the order of recusal, he said that "he excuses himself from adjudication of this dispute to avoid any appearance of bias or impropriety." Judge Kurt Englehardt has followed suit, recusing himself from a non-class action suit against Orleans Levee District and explaining that he was doing so to "avoid any appearance of bias or impropriety." Chief Magistrate Judge Alma Chasez also has recused herself from hearing a levee breach case on the same grounds. In fact, all of the state court judges in the 24th Judicial District Court for the Parish of Jefferson have recused themselves from hearing damage suits arising from Hurricane Katrina that have been filed in their court. Kate Moran, *Judges Back Off Flood Lawsuits*, Times-Picayune, May 2, 2006.

After Judge Porteous recused himself from hearing the consolidated cases which are the basis for this petition, the matters were transferred to Judge Duval, who like Judge Porteous, has an adult child whose home flooded. Status Conference Transcript, March 24, 2006, at 26. Petitioner Orleans Levee District then moved for recusal of all of the judges of the Eastern District of Louisiana pursuant to 28 U.S.C. §455(a) and (b)(4). (*See* Motion for Disqual. of the Dist. & Magistrate Judges of the U.S. Dist. Ct. for the E.D. *En Banc*, filed March 24, 2006.)

Petitioners sought appointment of district and magistrate judges from the Middle or Western Districts of Louisiana to preside over these cases. Under 28 U.S.C. §292(b), the Chief Judge of the district can reassign the cases to a district judge outside the district when there is no member of the district court who can hear them. Petitioners contended that this could ensure the appearance of impartiality with relatively little burden on the parties or the judicial system.

On March 28, 2006, Judge Duval, to whom the cases had been reassigned, denied the motion for *en banc* recusal as "procedurally improper." Order & Reasons, Mar. 28, 2006. He stated: "To attempt to recuse every judge and magistrate judge of this Court *en banc* is premature, given the fact that the undersigned may not have a basis for recusal." He therefore directed that any "proper motion" to recuse him, or any directed to the Magistrate Judge, be filed by April 5, 2006. Petitioner then filed a writ of mandamus in the United States Court of Appeals for the Fifth Circuit seeking *en banc* recusal of the judges in the Eastern District of Louisiana.

While this petition was pending, Petitioner moved for recusal of Judge Duval and Magistrate Judge Wilkinson. Based on information shared at a status conference on March 24, 2006, Petitioners noted that the homes of Judge Duval's daughter and courtroom deputy were damaged by the flooding, and also that the courtroom deputy was forced to relocate her family to Houma, Louisiana. Magistrate Judge Wilkinson had stated that the homes of some of his family members and his law clerk were also flooded as a result of the hurricane. In addition, Petitioner stressed the effects of the flooding on the courthouse and its operations.

On May 4, 2006, Judge Duval denied the motions for disqualification. App. at 2. Judge Duval acknowledged that his daughter's home experienced flooding, but said that he, his wife, and his daughter did not incur any financial or economic harm as a result of the flooding in New Orleans. App. at 6. He explained that his daughter had been fully compensated for all damage to her home and that she had filed an affidavit to the effect that she will opt out of any class action. App. at 6-7, 16. Judge Duval acknowledged that he did not have use of his home for about two months, that he was displaced from the courthouse for a significant period of time (relocating twice to courthouses in Lafayette and Houma), and that he had received financial assistance from the Federal Emergency Management Agency. (App. to Petition for Mandamus to the Fifth Circuit, at 368). Nonetheless, Judge Duval stated that he "and his spouse were only minimally impacted by this storm. Clearly, a reasonable person, knowing all the circumstances would recognize that the undersigned would be impartial." App. at 15. Judge Duval concluded: "Obviously, if I cannot hear this case, no judge in this district can. As a matter of extreme serendipity my family and I had no economic loss as a result of the flooding in Orleans and Jefferson Parishes. Any inconvenience was ephemeral and remote." App. at 22.

Petitioners then filed another petition for a writ of mandamus in the United States Court of Appeals for the Fifth Circuit, seeking recusal of Judge Duval and Magistrate Judge Wilkinson and again renewing their request for *en banc* recusal of all of the judges of the Eastern District of Louisiana. On May 23, 2006, the Fifth Circuit issued a brief order denying the petitions for writs of mandamus "essentially for the reasons stated in the

district judge's 4 May 2006 and the magistrate judge's 19 April 2006 orders." App. at 1. Petitioners then sought rehearing and rehearing *en banc*, which was denied on June 21, 2006.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT REVIEW TO RESOLVE A CONFLICT AMONG THE CIRCUITS AND AN ISSUE OF NATIONAL IMPORTANCE CONCERNING WHETHER 28 U.S.C. §455(a) OR §455(b)(4) REQUIRE A PROCEDURE FOR EN BANC RECUSAL OF JUDGES AND WHETHER EN BANC RECUSAL IS REQUIRED WHEN ALL OF THE JUDGES ARE SUBSTANTIALLY AND DIRECTLY AFFECTED BY A CATASTROPHE.

A. §455(a)

To ensure the impartiality and appearance of impartiality of judges required by due process, federal law is specific as to when judges must be recused. Section 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a). The provision is written in mandatory language and focuses on the appearance of impartiality; a judge is disqualified if a reasonable person could question his or her impartiality. As this Court has explained, the provision is designed "to promote public confidence in the integrity of the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

This case poses the issue of whether *en banc* recusal of judges within a federal district court is warranted when there is a catastrophic event directly affecting all members of a community and when all the judges within a district are members of the proposed classes in class action suits pending before them. The district court in this case deemed the motion for *en banc* recusal to be procedurally improper and refused to even consider it. The Fifth Circuit affirmed for the reasons given by the district court. App. at 1.

This creates a direct conflict with other circuits which have expressly ordered *en banc* recusal in response to catastrophes affecting all members of the community. In *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995), the Tenth Circuit held that §455(a) required recusal of all judges of the Western District of Oklahoma in the trial of an alleged co-conspirator to the Oklahoma City bombing. The building housing the district court had been damaged by the bombing of the nearby Alfred P. Murrah federal building, and some court employees – though none of the judges or their immediate families – were injured or had friends or relatives who were injured or killed. *Id.* at 349.

The Tenth Circuit began by observing, in words that obviously describe this case as well: "Needless to say, there is no case with similar facts to which we can look for guidance in our application of the law to the facts in this case." *Id.* at 352. The court's explanation shows the clear conflict between its approach and that followed by the lower courts in this litigation. The court stated:

> We conclude based on the extraordinary circumstances of this case that a 'reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality.' Judge Alley's courtroom and chambers were one block

> away from the epicenter of a massive explosion that literally rocked downtown Oklahoma City, heavily damaged the Murrah building, killed 169 people, and injured many others. The blast crushed the courthouse's glass doors, shattered numerous windows, ripped plaster from ceilings, dislodged light fixtures, showered floors with glass, damaged Judge Alley's courtroom and chambers, and injured a member of his staff, as well as other court personnel and their families. Based on these circumstances, we conclude that a reasonable person could not help but harbor doubts about the impartiality of Judge Alley. Because Judge Alley's 'impartiality might reasonably be questioned' in the instant case, 28 U.S.C. §455(a) mandates recusal.

Id. at 352. The Tenth Circuit thus ordered *en banc* recusal of all of the judges in the Western District of Oklahoma and assigned a judge from Colorado to preside over the cases.

The parallel between this case and *Nichols* is striking. The only meaningful difference is in the conclusion of the circuits. The flooding for which plaintiffs seek to hold defendants liable had at least as severe an impact on the court, judges, and staff of the Eastern District of Louisiana as did the bombing in *Nichols*. As in *Nichols*, the courthouse's operations were suspended. Unlike *Nichols*, in which the court was functioning normally within one week of the bombing (*see* Office of Pub. Affairs, Admin. Office of the U.S. Courts, "Oklahoma City Remembers," The Third Branch (April 1996)), here the district court relocated for two months to courthouses ranging from 50 to 350 miles away. As in *Nichols*, the district court judge assigned the case did not personally suffer economic loss or injury to a

family member. But in both cases, some court personnel were directly affected. For example, Judge Duval's courtroom deputy and one of Magistrate Judge Wilkinson's law clerks suffered substantial flood damage to their homes. Simply put, both the Oklahoma City bombing and the flooding after Hurricane Katrina were disasters that greatly affected every member of the area where they occurred.

The lower courts' decisions in this case also conflict with the decision of the United States Court of Appeals for the Seventh Circuit in *In re Nettles*, 394 F.3d 1001 (2005). The defendant, Gale Nettles, was charged with attempting to damage and destroy the Dirksen Courthouse in downtown Chicago, the site of the United States District Court for the Northern District of Illinois. The defendant allegedly purchased ammonium nitrate fertilizer from an undercover FBI agent and attempted to sell it to another undercover agent who was posing as a terrorist. The defendant moved to disqualify all of the judges in the Northern District of Illinois. The district judge to whom the case had been assigned denied the motion saying that there "had never been 'any real danger' to the building and she had no 'actual fear of harm' that might influence her rulings in this case." *Id.* at 1001.

The Seventh Circuit reversed. The court noted that there was never any actual threat because the accomplices were federal agents. But the court nonetheless ordered the recusal of all of the judges in that federal district. The court stated: "We do not suggest that Judge Bucklo would in fact be prejudiced against Nettles. The issue is appearances. With reluctance we conclude that Nettles is entitled

to a writ of mandamus directing the recusal of Judge Bucklo and any other judge of the Northern District."* *Id.* at 1003. The Seventh Circuit then *sua sponte* recused itself from hearing any further appellate matters. The court explained: "Although we feel ourselves to be no more prejudiced against Nettles than Judge Bucklo does, a reasonable observer might conclude that, should he be convicted and sentenced, and appeal, he would no more get a fair shake in our court that he would in the district court." *Id.* The court said that no purpose would be served by requiring the defendant to make a new motion for disqualification of the judges of the court of appeals. The court stated: "A more efficient method of proceeding is for us to recuse ourselves now, to be replaced by judges from other circuits who will be designated to hear any further proceedings instituted by Nettles in this court." *Id.*

The district court in this case distinguished *Nichols* and *Nettles* based on those cases involving criminal acts. App. at 13, 23. But this is a distinction that makes no difference under §455(a). In this case, like those, the judges and their courtroom staffs have been personally affected by the events giving rise to the lawsuit. Nor is there any reason why it matters that *Nichols* and *Nettles* involved planned attacks, while this case involves alleged

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* In both *Nichols* and *Nettles*, the United States Courts of Appeals for the Tenth and Seventh Circuits respectively granted writs of mandamus overturning the district court's failure to grant the disqualification motions. Petitioners in this case used the same procedural device, a petition for a writ of mandamus, which was denied by the United States Court of Appeals for the Fifth Circuit. Thus, the issue in this case is procedurally identical to those in *Nichols* and *Nettles* in that each of these cases raises the issue of whether a federal court of appeals should grant a writ of mandamus requiring *en banc* disqualification when all of the judges in a district are affected by a catastrophic event.

wrong-doing by a governmental entity and others. The crucial similarity is that in each case all of the judges were significantly personally affected so as to create the appearance of a lack of impartiality. In fact, the effect on the district court judge and magistrate judge in this case were much greater than the direct impact on the judges in *Nichols* and *Nettles*.

Defendant Orleans Levee District, like the defendants in *Nichols* and *Nettles* is simply seeking the fairness assured by §455(a). With over $200 billion claims pending against it, Orleans Levee District is requesting that the matter be assigned to a judge who was not directly personally affected and who is not a member of the pending class actions. This can be easily accomplished, with relatively little disruption, by assigning the cases, pursuant to 28 U.S.C. §292(b), to district and magistrate judges from the Middle or Western Districts of Louisiana.

This case thus poses both a procedural issue as to whether §455(a) requires a mechanism for considering *en banc* recusal and a substantive issue as to the appropriate standard for determining when recusal is warranted under §455(a). The district court judge in this case stressed that he and his family suffered only minimal loss and that he would be fair. He stated: "This Article III judge, appointed for life, with absolutely no economic interest in this litigation can and will decide each and every issue in this case fairly and impartially." App. at 22. The judge focused on the extent of economic loss suffered by him and his family. App. at 22.

This, however, is a standard which conflicts with decisions of this Court and those of other Circuits. This

Court has emphasized that it is the *appearance of impartiality* that is crucial under §455(a):

> The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible.

See, e.g., Liljeberg v. Health Services Acquisition Corp., 486 U.S. at 860 (citation omitted). Likewise, the Seventh and Tenth Circuits stressed that it is the appearance of impartiality that is crucial under §455(a). For example, in *Nettles*, the Seventh Circuit required recusal of all of the district judges in the Northern District of Illinois and all of the Seventh Circuit judges so as to avoid the appearance of impropriety, even though none suffered the slightest injury or was ever in any actual danger.

In sharp contrast, the district court judge in this case focused not on the appearance of impartiality, but his own sense that he could be fair and impartial. This is a quite different standard than that prescribed by this Court and followed by other Circuits. Judge Duval gave no weight to the many ways in which he and his family had been affected including:

– Judge Duval and his family lost the use of their home in New Orleans for several months.

– Judge Duval lost the use of his office, chambers, and courthouse in New Orleans for two months.

– Judge Duval was required to work initially out of the Western District of Louisiana's courthouse in Lafayette, Louisiana for two weeks while living with his wife's parents.

– After leaving the Lafayette courthouse, Judge Duval worked out of the Eastern District's Houma courthouse for about two months and lived in a furnished home in Houma.

– Telephone, mail, and e-mail service were disrupted for Judge Duval and all of the other judges in the district.

– Judge Duval received FEMA assistance.

– Judge Duval's daughter suffered flooding and she also received FEMA assistance.

Petitioner contends that all of this would cause the reasonable person to believe that there is the appearance of impropriety in Judge Duval handling the many lawsuits concerning blame for the flooding. Judge Duval stated: "Obviously, if I cannot hear this case, no judge in this district can." App. at 22. That is precisely the issue: should any judge in the Eastern District of Louisiana hear these cases when all have been so directly affected by the events giving rise to this lawsuit? Should a party be required to make individual motions to recuse each district court judge one after another or must there be a procedure, as found by the Seventh and Tenth Circuits, for *en banc* recusal? This Court should grant review to determine the appropriate procedures and standards to be used under §455(a).

B. §455(b)

In addition to §455(a), §455(b) enumerates specific circumstances that warrant disqualification. For example, §455(b)(4) provides that a judge is disqualified if "[h]e knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

This case presents the issue of whether disqualification was required under §455(b)(4) because the judges and their family members are all a part of the class actions that are pending before them. It is undisputed that all of the judges of the Eastern District of Louisiana, including Judge Duval and Judge Wilkinson, are members of these putative class actions seeking damages for individuals who were inconvenienced, lost use of property, or were displaced as a result of the flooding.

The district court denied recusal because of its conclusion that it did not "have a financial interest in this litigation" and because the district judge's daughter agreed to opt out of the class action suits. App. at 15-16. But the judge and his family members do have potential financial interests in the litigation and the classes as defined in the complaints clearly include the judge and his family. The suits propose classes that broadly seek monetary relief for Jefferson and Orleans Parish residents who have suffered or may suffer, among other things, mental or emotional distress, "inconvenience," or fear of future injury as a result of Hurricane Katrina's demolition of levees and floodwalls. *See, e.g.*, Tauzin Am. Compl. ¶¶13, 40. All

judges of the Eastern District fall within such a class and therefore hold a disqualifying financial interest.

The approach taken by the district court and the Fifth Circuit in this case as to §455(b)(4) conflicts with prior decisions of this Court and of other circuits. Section 455(d)(4) defines "financial interest" in relevant part as "ownership of a legal or equitable interest, however small." This Court has explained that because disqualification under §455(d)(4) is required "no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety," this provision "is not simply redundant with the broader coverage of §455(a)." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. at 860 n.8.

Contrary to the approach taken by the lower courts in this case, the Fourth Circuit has held that it is well settled that "[i]f a judge has an ownership interest in a party or in the subject matter in controversy, it matters not at all whether the interest is a large or infinitesimally small amount." *In re Va. Elec. and Power Co.*, 539 F.2d 357, 368 (4th Cir. 1976). In fact, the Fifth Circuit previously had held that a judge could be disqualified from hearing a class action suit when the class included the judge or the judge's family members. *Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1029-30 (5th Cir. 1998) ("where a judge, her spouse, or a minor child residing in her household is a member of a putative class, there exists a 'financial interest' mandating recusal under §455(b)(4).")

Thus, this case presents an important issue on which there is a division among the lower courts as to what is sufficient to require disqualification of a judge under 28 U.S.C. §455(b)(4). Does the statute mean what it says in

providing that an interest, "however small," is a disqualifying financial interest? Is *en banc* recusal warranted when all of the judges in the district, and their families, have been financially affected by the events giving rise to the lawsuits and are members of the putative classes in the class action suits pending before them?

CONCLUSION

The tragic reality is that there are catastrophic events like the Oklahoma City bombing and Hurricane Katrina that dramatically affect all of the members of the community, including the judges and court personnel. It is precisely in such cases, where the stakes are so high and emotional involvement so great, that it is essential that there be the appearance of an impartial judiciary. It is important that this Court grant review in this case to assure the appearance of impartiality in this litigation and to clarify the standard for future situations that unfortunately surely will arise.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 06-30351

In Re: BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT; WASHINGTON GROUP INTERNATIONAL, INC.,

Petitioners.

Petitions for Writ of Mandamus to the United States District Court for the Eastern District of Louisiana

(Filed May 23, 2006)

BEFORE SMITH, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petitions for writ of mandamus to recuse the district court for the Eastern District of Louisiana and appoint other district and magistrate judges from the Middle or Western Districts of Louisiana to preside over the matters referenced in the petitions are **DENIED**, essentially for the reasons stated in the district judge's 4 May 2006 and the magistrate judge's 19 April 2006 orders, ***Colleen Berthelot, et al. v. Boh Bros. Constr. Co., L.L.C., et al.***, No. 05-4182 (E.D. La. 2006).

IT IS FURTHER ORDERED that the motion by the Board of Commissioners of the Orleans Levee District to correct its petition for writ of mandamus is **GRANTED**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

COLLEEN BERTHELOT, ET AL.,	**CIVIL ACTION**
VERSUS	**NO. 05-4182**
BOH BROTHERS CONSTRUCTION CO., L.L.C., ET AL.	**SECTION "K" (2) CONS. KATRINA CANAL**

ORDER AND REASONS

(Filed May 4, 2006)

Before the Court is a Motion to Disqualify Judge filed by the Board of Commissioners for the Orleans Levee District ("OLD") (Doc. 61)[1] and a Motion for Recusal filed by the Washington Group International, Inc. ("WGI") (Doc.

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[1] The Board of Commissioners for Orleans Levee District is named in the following cases and as such this motion pertains to these specific cases:

O'Dwyer v. United States, C.A. No. 05-4181,
Berthelot v. Boh Bros., C.A. No. 05-4182
Harvey v. The Board of Comm., C.A. No. 05-4568
Vodanovich v. Boh Bros., C.A. No. 05-5237
Kirsch v. Boh Bros., C.A. 05-6073
Ezell v. Boh Bros., C.A. No. 05-6314
Vanderbrook v. State Farm, C.A. 05-6323
Brown v. Boh Bros., C.A. No. 05-6324
Leblanc v. Boh Bros., C.A. No. 05-6327
Milton Armstead v. Nagin, C.A. No. 05-6438
Tauzin v. The Board of Comm., C.A. No. 06-0020,
Conlay v. Encompass, 06-151
Diane Rogers v. Encompass, C.A. No. 06-152
Baird v. Encompass, C.A. No. 06-153
Humphreys v. Encompass, C.A. No. 06-169
Bradley v. Pittman, C.A. No. 06-225
Finney, et al. v. Boh Brothers, et al. C.A. No. 06-866.

63)[2]. Generally, these defendants seek the recusal of the undersigned judge pursuant to 28 U.S.C. §§ 455(a)[3] and 455(b)(4)[4] with respect to litigation arising out of the canal levee and/or floodwall breaches and subsequent flooding which occurred after Hurricane Katrina struck New Orleans on August 29, 2005.[5] Having entertained oral argument on this matter on April 19, 2006, and having reviewed the pleadings, memoranda, and the relevant law, the Court finds these motions without merit.

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[2] The Washington Group International, Inc. are named in the following cases and as such, this motion pertains to these specific cases:

Berthelot v. Boh Bros., C.A. No. 05-4182
Vodanovich v. Boh Bros., C.A. 05-5237
Kirsch v. Boh Bros., C.A. No. 05-6073
Ezell v. Boh Bros., C.A. No. 05-6314
Brown v. Boh Bros., 05-6324
Leblanc v. Boh Bros., 05-6327
Tauzin v. Boh Bros., C.A. No. 06-020
Finney v. Boh Bros., C.A. No. 06-886.

[3] 28 U.S.C. § 455(a) provides "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

[4] § 455(b)(4) provides, in relevant part, "He shall also disqualify himself . . . [where] he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

[5] While initially WGI's motion urged only § 455(a) as grounds for recusal, in its Reply Memorandum at footnote 4, it now "argues for recusal pursuant to § 455(b)(4)." As such, the Court will address the legal arguments which are equally applicable to both WGI and OLD's motions.

Background

On August 29, 2005, Hurricane Katrina made landfall along the Gulf Coast of Louisiana and Mississippi. While at one point it reached Category 5 strength, by the time it reached New Orleans, it had reduced in speed to become reportedly a Category 3 hurricane. Regardless of its strength, it is uncontested that numerous levees and/or floodwalls breached – that is they failed – causing a catastrophic loss of lives and property which was the subject of national news coverage for weeks on end and still is the subject of national press.

As a result of this phenomenon, approximately two-thirds of New Orleans was flooded; the city was ordered evacuated and hundreds of thousands of persons were displaced. A number of class action lawsuits have been filed as a result, and in an attempt to manage discovery in this multi-headed Hydra, the Court has consolidated all litigation arising out of damages allegedly caused by the breaches and/or failure of the levees and/or floodwalls along the 17th Street Canal, London Street Canal, or the Industrial Canal and flooding allegedly caused by the Mississippi Gulf River Outlet ("MRGO").

OLD has been sued in the enumerated cases because of, *inter alia*, its alleged negligence in maintenance of the levees under its control. WGI has been sued in the noted cases because it allegedly was contracted to level and clear abandoned industrial sites along the Industrial Canal between the floodwall and the canal. Plaintiffs contend that the use of heavy vehicles and/or other heavy construction equipment along the Industrial Canal between the floodwalls and the canal damaged the levee and/or floodwalls

and caused and/or contributed to the breach in the levees or floodwalls in that area.

The classes as defined in the numerous lawsuits filed have not been certified and in light of Fifth Circuit precedents, the likelihood of certification of the mammoth classes[6] defined in some of these lawsuits appears unlikely. Nonetheless, in a number of these lawsuits, there are claims for damages that include not only destruction of property but, *inter alia,* mental anguish, emotional distress, inconvenience, loss of use of property and fear of future injury for persons residing in New Orleans and Jefferson Parish.

Because the basis for these motions concerns whether the undersigned's impartiality might reasonably be questioned under § 455(a) because of my experiences and those of my spouse, and any interest my daughter might have in recovery pursuant to these class actions, or whether the undersigned, individually, and/or my spouse has a financial interest in the subject matter or any other interest that could be substantially affected by the outcome of the proceedings which would require recusal under § 455(b)(4), the undersigned specifically recounted the particulars of my evacuation and temporary relocation caused by the flooding, as well as that of my daughter, and the damages caused by flooding to my daughter's home at

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[6] For example, in *Tauzin, et al. v. Board of Comm'rs of the Orleans Levee District, et al.,* C.A. No. 06-020 the amended complaint modifies the purported plaintiff class to include all residents and property owners in the Parishes of Orleans and Jefferson whose persons or properties were or may hereafter be damaged by flooding caused by the failure of the hurricane protection levees and floodwalls along the 17th Street Canal, the London Avenue Canal and the Industrial Canal, in New Orleans, Louisiana, on or shortly after August 29, 2005.

the hearing held on April 19, 2006. By this reference, the undersigned incorporates herein those statements.

For purposes of these written reasons, the following points will suffice:

1. The undersigned, my wife and my daughter did not incur any financial or economic harm as a result of the flooding in New Orleans. My home was not flooded and in fact is located a substantial distance from any point where flooding occurred.

2. My daughter is an attorney and did not lose one day's wages as a result of the storm. She was fully compensated for all damage to her home and had no economic damage of any kind.

3. My daughter has filed an affidavit with the Court attesting that she will not join any class action arising out of the minimal two inches of flood waters which impacted her home which flooding, to her knowledge, was not caused by the breach of the 17th Street Canal but rather was caused by the decision to stop pumping made by Jefferson Parish which incident is not part of these consolidated proceedings.

4. Any inconvenience incurred by me and/or my spouse was minimal in light of the following facts:

    a.) I was able to verify soon after the flooding that my house in New Orleans had sustained no flood damage;

    b.) I was able to retrieve from my home sufficient clothing for me and my spouse within the first weeks of the evacuation as I came to New Orleans during that time to retrieve

equipment from the courthouse for the Eastern District of Louisiana;

c.) Because of my wife's foresight, I did not experience the sensory assault of losing my refrigerator/freezer; indeed, I enjoyed the fruits of my freezer throughout the exodus;

d.) As a member of the judiciary, I was initially accommodated in pursuing my professional duties through the good graces of the United States District Court for the Western District of Louisiana in Lafayette, Louisiana, and lived with my wife's parents who reside three blocks from the courthouse;

e.) I then was able to sit in the George Arceneaux Courthouse for the Eastern District of Louisiana in Houma, Louisiana, which is my hometown and which courthouse was named for my predecessor and former law partner; and

f.) I lived in a furnished house outside of Houma and incurred no expenses caused by the move as I received a stipend from the Government to cover my living expenses while displaced.

With these facts in mind, the Court will now turn to the legal issues at hand.

Recusal Based on Section 455(a)

The Standard

As previously noted, 28 U.S.C. § 455(a) provides, "[a]ny justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his

impartiality might reasonably be questioned." Obviously, the purpose of this rule is to protect against even the appearance of impropriety. The United States Supreme Court in discussing this provision stated:

> If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible.

Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860, 108 S. Ct. 2194, 2203 (1988) (failure of judge to recuse where he was trustee of university which had interest in litigation violated statute). In *Sao Paulo State of the Federative Republic of Brazil v. American Tobacco Co., Inc.* 122 S. Ct. 1290 (2002) (statute did not require recusal of judge whose name was added mistakenly and without his knowledge to a pro forma motion to file an amicus brief in a similar suit against some of the same defendants prior to his appointment to the bench), the Supreme Court amplified the meaning of this statement when it reversed the Fifth Circuit's decision concerning the mandatory recusal of Judge Barbier in the tobacco litigation further explicating the criteria for a section 455(a) analysis:

> The Fifth Circuit's decision is inconsistent with *Liljeberg v. Health Services Acquisition Corp.* 486 U.S. 847, 108 S. Ct. 2197, 100 L.Ed. 2d 855 (1988), which stated that § 455(a) **requires judicial recusal "if a reasonable person, *knowing all the circumstances*, would expect that the judge would have actual knowledge"** of his interest or bias in the case. *Id.*, at 861, 108

> S. Ct. 2197 (internal quotation marks omitted and emphasis added).

Sao Paolo State, 535 at 233-34 (emphasis added).

"Although section 455 speaks in mandatory language, in actual application we have recognized that the decision to recuse is committed to the sound discretion of the district court and typically is reviewed for an abuse thereof. But, '[i]f the question is a close one, the balance tips in favor of recusal.'" *In re Chevron U.S.A., Inc.,* 121 F.3d 163, 165 (5th Cir. 1997) *citing Nichols v. Alley,* 71 F.3d 347, 352 (10th Cir. 1995).

Nonetheless, it has also been recognized that the statute "'must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of person bias or prejudice.'" *Nichols,* 71 F.3d at 351 *citing United States v. Cooley,* 1 F.3d 985, 993 (10th Cir. 1993). That court continued:

> Neither is the statute intended to bestow veto power over judges or to be used as a judge shopping device. *Greenspan,* 26 F.3d at 1006; *Cooley,* 1 F.3d at 993. Further, we are mindful that a judge has as strong a duty to sit when there is no legitimate reason to recuse as he does to recuse when the law and facts require. *Greenspan, 26* F.3d at 1005; *In re American Ready Mix, Inc.,* 14 F.3d at 1501; *Hinnan,* 831 F.2d at 939.

Id.

As noted by the Fifth Circuit in the context of its review of a district court's decision:

> Courts have interpreted this statute to require recusal if a reasonable person, knowing all of the facts, would harbor doubts concerning the judge's impartiality. *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 860-61, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). In conducting this review, we must ask how these facts would appear to a "well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person." *U.S. v. Jordan,* 49 F.3d 152, 156 (5th Cir. 1995). Moreover, courts should be cautious and discriminating in reviewing recusal motions. As the Seventh Circuit has noted:
>
> > A thoughtful observer understands that putting disqualification in the hands of a party, whose real fear may be that the judge will apply rather than disregard the law, could introduce a bias into adjudication. Thus the search is for a risk substantially out of the ordinary.
>
> *In re Mason,* 916 F.2d 384, 385-86 (7th Cir.1990), cited with approval in *Jordan*, 49 F.3d at 156.

Sensley v. Albritton, 385 F.3d 591, 599 (5th Cir. 2004).

Analysis of the Undersigned's Duty to Recuse Pursuant to Section 455(a)

OLD argues that because every judge, clerk and staff member of the Eastern District of Louisiana was displaced and would be putative class members in the levee breach litigation, a reasonable factual basis exists to question the Court's impartiality. OLD maintains that because of the presence of numerous "limited fund" defendants, combined with the amount of damages at issue, the circumstances

present the substantial likelihood that one or more limited fund classes will be certified pursuant to Fed. R. Civ. P. 23(b)(1)(B)[7]. As such, OLD contends that there exists a strong probability that "their wishes notwithstanding, neither Judge Duval, nor his staff, nor his family would be able to 'opt out' of the class(es) over which they preside." (Motion for Disqualification at 3).

WGI and OLD rely substantially on *Nichols v. Alley,* 71 F.3d 347 (10th Cir. 1995) and *In re Nettles,* 394 F.3d 1001 (7th Cir. 2005) to support the proposition that there is an appearance of impartiality. *Nichols* concerned the recusal of Judge Alley of the Western District of Oklahoma on motion of both Terry Nichols and Timothy McVeigh who were charged with the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. That explosion destroyed the Murrah Building, killed 169 people, injured many others and caused extensive damage in the surrounding vicinity. The Federal Courthouse where Judge Alley sat sustained massive damages as a result of the explosion. After Judge Alley denied motions for recusal filed by both defendants, Nichols filed a petition for writ of mandamus with the Tenth Circuit seeking the disqualification of all judges of the Western District of Oklahoma.

Using the analysis noted above in light of the facts of that case, the Tenth Circuit found that a writ of mandamus seeking disqualification had to be granted. Noting the damage to the Oklahoma courthouse, including damage to

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[7] The Court would note that the defendants' categorization of these classes as being necessarily certified as "limited fund" classes pursuant to Rule 23(b)(1)(B) is not well founded. *See Ortiz v. Fibreboard Corp.* 199 S. Ct. 2295 (1999).

Judge Alley's courtroom and chambers, and injury to a member of his staff, as well as other personnel and their families, the Tenth Circuit concluded that a reasonable person could not help but harbor doubts about Judge Alley's impartiality and thus he had to be recused. He was replaced with an available judge outside of the State of Oklahoma.

In *In re Nettles,* a defendant was charged with attempting to damage and destroy the Dirksen Courthouse in downtown Chicago, the site of the federal courts in Chicago, including the United States District Court for the Northern District of Illinois. Judge Bucklo of the Northern District of Illinois was assigned the case. A motion to recuse followed, based on the argument that since the trial concerned a threat to the judges' safety, a trial presided over by any one of the members of the Northern District of Illinois would create an appearance of bias. Judge Bucklo denied the motion, reasoning that "there had never been 'any real danger' of damage to the building and she had no 'actual fear of harm' that might influence her rulings in the case." *Nettles* at 1002.

The defendant petitioned for a writ of mandamus as to all judges of the Northern District. of Illinois. The Tenth Circuit found that where recusal was sought based on a genuine threat to a judge, and not motivated by a desire to recuse the judge, recusal was required. *Id. citing United States v. Yousef,* 327 F.3d 56, 170 (2d Cir.2003); *Nichols v. Alley,* 71 F.3d 347 (10th Cir.1995); *United States v. Greenspan,* 26 F.3d 1001, 1006-07 (10th Cir.1994); *United States v. Cooley,* 1 F.3d 985, 993-94 (10th Cir.1993). The court explained the factual underpinnings as follows:

> According to the indictment, Nettles, while serving a two-year prison sentence imposed by a judge of the Northern District, told a fellow prisoner that he wanted to destroy the Dirksen Courthouse, killing or injuring its occupants, by means of a truck bomb. The prisoner reported the threat, and the FBI gave him a phone number, to give Nettles, of a purported supplier of ammonium nitrate. Upon his release from prison Nettles called the number and made arrangements for the purchase-from an undercover FBI agent, of course-for resale to a purported terrorist (another undercover agent) who seemed willing and able to use it to destroy the building. *Te-Ta-Ma Truth Found.-Family of URI, Inc. v. World Church of the Creator*, 246 F.Supp.2d 980 (N.D.Ill.2003). Since no proceedings against Nettles were pending in the Northern District, his actions could not have been taken with recusal, or some other tactic that might delay or derail a case against him, in mind.

Id. at 1002-03. It was on this factual basis that the Seventh Circuit, which also sat in the same building targeted by the defendant, granted the writ of mandamus disqualifying Judge Bucklo. The circuit court then recused itself to be "replaced by judges from other circuits who will be designated to hear any further proceedings instituted by Nettles in this court." *Id.*

Neither of these cases is factually analogous to the situation at bar. To begin, the two moving defendants in this case are not accused of criminal activity aimed at physically harming the Eastern District of Louisiana. There is no bias arising out of a threat to the undersigned's safety as found in *Nettles*. Likewise, while the damage to the Oklahoma City courthouse was actual and

extensive, it was the result of an intentional criminal act. There are no allegations of such purposeful, focused action against this courthouse in the cases at bar.

In addition, unlike those two cases, recusal based on § 455(a) would create a precedent that could be abused. In essence, defendants argue that if a judge has **general knowledge** of facts or has been generally impacted by the facts at issue that would give him "an interest in the litigation," then an appearance of impartiality is created. Indeed, it would appear that defendants contend that where a judge is generally affected by the consequences of living in the location of the courthouse in which he sits, he has an interest in the litigation that requires recusal under § 455(a). This analysis belies the general realities of being a judge – that is a judge cannot and does not live in a vacuum – and the normal requirement is that a judge must judge only the facts presented in Court.

If fear of harm caused by flooding and living in a city that has been harmed by flooding is a sufficient reason to mandate recusal, one could argue that living in a city that is inundated by crime, as was and is New Orleans, and is harmed by crime, as is New Orleans, would require the recusal of judges who live here from hearing criminal matters because they would have a heightened interest in incarcerating all alleged criminals regardless of the facts. Such a position is based on the erroneous presumption that a judge would elevate his or her allegiance to a place of residence over one' [sic] sworn constitutional oath to adjudicate fairly and equitably based solely on the facts and the law. As such, this rationale could be used to justify the recusal of a sitting judge from hearing a class action arising from the crash of an airplane at the airport in the city in which the judge resides. Certainly, a judge could be

inconvenienced by an airport's subsequent closure; he or she could have fear of mismanagement of the air traffic controllers of that airport; and persons affected by that crash certainly might have ties to the Court, but that kind of general impact is not and should not be enough to mandate recusal.

As noted at the hearing and in this opinion, the undersigned and his spouse where only minimally impacted by this stone. Clearly, a reasonable person, knowing all the circumstances, would recognize that the undersigned would be impartial. It is the duty of judges to judge fairly and justly, putting overarching realities and hardships out of that equation. As noted in *U.S. v. Jordan*, 49 F.3d 152 (5th Cir. 1995), "[E]ach § 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence." *Id.* at 157.

Furthermore, practically speaking, if § 455(a) recusal is mandated in this situation, then would not all of the cases arising out of Katrina likewise require recusal? Such a result would wreak havoc on the docket of the entire Eastern District of Louisiana, but more importantly would deprive those most in need of recourse the very judiciary that was established to deal with such litigation. Simply put, to find these circumstances such that they *de facto* create an appearance of impartiality [sic] is an overbroad approach to a § 455(a) inquiry.

Given the facts as delineated by the undersigned, the Court finds that to a "well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person." *U.S. v. Jordan*, 49 F.3d 152, 156

(5th Cir.1995), impartiality is clear. Indeed, to grant this motion might arouse the suspicion of that "thoughtful observer who understands that putting disqualification in the hands of a party, whose real fear may be that the judge will apply rather than disregard the law, could introduce a bias into adjudication." *Id.* Based on the facts outlined above, there is simply no question in the undersigned's mind that disqualification or recusal should not be granted based on § 455(a).

Finally, as to the applicability of § 455(a)[8] with respect to my daughter's interest in this litigation, she did not lose one day of pay, and she did not incur any economic loss as a result of the flooding, the cause of which is unclear and may not involve any of the breaches in this consolidated proceeding. Moreover, as a result of the hurricane and prudent management of her living arrangements and contractual arrangements, her net worth was greater than it was before the hurricane. It would seem inconceivable that she would be an appropriate member of any certifiable class, and furthermore, she has declared under oath and as an officer of the Court that she will not participate in any action seeking such recovery.

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[8] As the undersigned's daughter is not a "minor residing in my household," the Court will follow the dictates found in *Tramonte v. Chrylser* [sic] *Corp.*, 136 F.3d 1025 (5th Cir. 1998). As she would at best be a member of a putative class, and members of a putative class are not "parties" to a class action for these purposes of 28 U.S.C. § 455(b)(5), *Id* at 1030, the undersigned has examined the recusal issue based on his daughter's "claims" under § 455(a).

Recusal Based on Section 455(b)(4)

The Standard

Recusal or disqualification is also sought based on 28 U.S.C. § 455(b)(4). This statute, as previously noted, provides in relevant part:

> [A judge] shall also disqualify himself . . . [where] he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

28 U.S.C. § 455(b)(4). In discussing the analysis required under this statute, the Fifth Circuit stated:

> Although few federal courts have ever reached the issue squarely, it seems fairly obvious that where a judge or an immediate family member is a member of a class seeking monetary relief, § 455(b)(4) requires recusal because of the judge's financial interest in the case. *Cf. In re City of Houston,* 745 F.2d at 928 n. 6 (strongly implying that judges must recuse themselves if they are class members with a pecuniary interest in the outcome of the litigation); *Christiansen v. National Sav. & Trust Co.,* 683 F.2d 520, 526 (D.C.Cir.1982) (implying that judges should recuse themselves if they are members of a class for which individual recovery is sought); *In re Cement Antitrust Litig.,* 673 F.2d 1020, 1024 (9th Cir.1981) (implying that judge's ownership of stock in a putative class member requires recusal). **A remote, contingent, or speculative interest is not a disqualifying financial**

> **interest under the statute. *See In re Placid Oil Co.*, 802 F.2d 783, 786-87 (5th Cir.1986)** (holding that judge's investment in a non-party bank did not require his recusal from a case with a different bank as a party, even though that case might have affected the banking industry). For example, owning stock in a publicly held company that may own a Chrysler vehicle offers no more than a remote or speculative interest. **On the other hand, of course, where a judge is a class member in an action seeking monetary relief, her direct financial interest runs afoul of § 455(b)(4).**

Tramonte v. Chrysler Corp., 136 F.3d 1025, 1029 (5th Cir. 1998) (emphasis added).

Tramonte arose in the context where plaintiff brought a state court action against an automobile manufacturer and dealership alleging paint defects caused by a manufacturing process that affected cars manufactured between 1983 and 1994. The case was removed to federal court; however, the district judge denied a motion for recusal and remanded the matter to state court. The manufacturer filed a notice of appeal concerning, *inter alia,* the refusal to recuse and the remand.

In the initial opinion denying the recusal, the district judge disclosed that "members of her family had owned Chryslers, and she acknowledged that one member presently owns one." *Id.* at 1029. She noted that the present owner had no interest in joining the putative class. She found that she had no "direct or immediate" interest in the case which required her recusal. *Id.* at 1027. The Fifth Circuit found that these disclosures were insufficient for it to review the order denying the recusal, because the decision did not disclose whether those family members

purchased Chryslers manufactured between 1983 and 1994, and whether those owners experienced flaking paint. In addition, the appellate court noted that the degree of relationship between the district judge and the family member who might be a member of the putative class was not disclosed, which prevented the appellate court from using the appropriate standard under 28 U.S.C. § 455(b)(4) or § 455(b)(5). The *Tramonte* court then set forth a framework for the analysis for the district judge to use upon remand to the district court, a portion of which is cited above.

The judge denied the recusal a second time based on her finding that no relative has owned a Chrsyler [sic] that has exhibited flaking paint between **1984 and 1993**. Chrysler again appealed contending that its records showed that in December of 1983, an [sic] person with the initials and last name of the judge had purchased a 1984 Dodge wagon. Because the recusal neither confirmed nor denied that she [was] the same person and because not enough information was given, the Fifth Circuit remanded the matter to enable that judge to enlarge her previous disclosure to include specific information as to whether § 455(b)(4) criteria were met. (Doc. 146-2 at p.3)

The district judge on the second remand recused based on the disclosure that an out-of-state nephew informed her that he had purchased a second-hand Chrysler with flaking paint, which he used as a temporary replacement automobile following the loss of his own automobile, and that he used it for a brief period and then sold it. She stated:

> Although the remote connection of a relative's brief encounter with a used Chrysler with flaking paint in my opinion would not require my

> recusal, the 5th Circuit's ruling seems to, and I hereby recuse myself, and order that the case be reallotted.

(Doc. 63, Motion to Recuse, Exh. "P").

Analysis of the Undersigned's Duty to Recuse Pursuant to Section 455(b)(4)

Relying on *Tramonte,* defendants contend that because the damages sought in some of the class actions include mental anguish, emotional distress, inconvenience, loss of use of property and fear of future injury for persons residing in New Orleans and Jefferson Parish, the undersigned must recuse. In *Tramonte,* the Fifth Circuit concurred with the dissent in *Union Carbide Corp. v. United States Cutting Serv.,* 782 F.2d 701 (7th Cir. 1986) which provided that disqualification becomes automatic from the moment a judge discovers his or her financial interest in the litigation; relinquishment of that interest at any point after discovery is no remedy unless the provision of § 455(f) apply. *Id.* at 1031.[9] Considering that the district judge apparently had no financial interest that would have triggered the requirements of § 455(b)(4), these statements might be considered dicta.

Nonetheless, as noted above, the *Tramonte* court stated that a remote, contingent or speculative interest is not a disqualifying financial interest under this statute. The Court has attempted to meticulously outline the

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[9] A compelling argument concerning whether the conclusions reached in this regard in *Tramonte* are correct can be found in *In re Initial Public Offering Securities Litigation,* 174 F. Supp. 2d 70, 88-90 (5th Cir. 2001).

circumstances of the undersigned relating to Katrina in both this opinion and in the incorporated record of the recusal hearing. It is the Court's firm opinion that it does not have a financial interest in this litigation. At best, such "interest" would be ephemeral, inchoate, and bordering on the metaphysical. This case is about people whose lives were disrupted as a result of flood waters, who lost their homes and businesses. This case is not about people who were not flooded and suffered no economic loss. *Tramonte* is distinguishable not only in law, but in fact.

Tramonte involved the direct, tangible ownership of a specific type of vehicle that was the subject of the class action. It did not involve, as does this case, a claim of inconvenience which two defendants' attorneys' "feel" that this judge and his spouse may have experienced despite the fact that the undersigned has averred that any such inconvenience certainly would not have been compensable and/or certifiable in a class action context. There is **nothing even remotely tangible** as found in *Tramonte* as to any "interest" that would serve as a basis for disqualification. As such, the Court finds no reason to recuse under § 455(b)(4).

Conclusion

The Court has read all of the memoranda, listened to oral argument, and ruminated concerning this very essential issue. These cases affect a multitude of people and businesses in this district, which is itself a paramount reason this case should be presided over by a judge of this district, if appropriate. A substantial majority of the litigants, both plaintiffs and defendants, are located here.

Knowledge of the area and its topographical and hydrological anomalies, *inter alia,* is an important factor in rendering fair, informed and impartial decisions. The litigants are entitled to have this case adjudicated in this district unless recusal is mandated.

This Court takes its duty to sit very seriously. This Court also takes its obligation to recuse when necessary very seriously. Obviously, if I cannot hear this case, no judge in this district can. As a matter of extreme serendipity my family and I had no economic loss as a result of the flooding in Orleans and Jefferson Parishes. Any inconvenience was ephemeral and remote. This Article III judge, appointed for life, with absolutely no economic interest in this litigation can and will decide each and every issue in this case fairly and impartially.

The Eastern District of Louisiana has a myriad of cases relating to Hurricane Katrina and its aftermath including various categories of insurance cases, civil rights cases, cases involving FEMA[10] and numerous others. It would appear if recusal is warranted here under § 455(a), it might be warranted in all of these cases. Furthermore, as a practical matter, these motions do not relate to all the cases consolidated for pre-trial purposes. Would this Court be required to recuse from all of these cases at this time? This action would in this Court's opinion be unwise. At the present time, the Court is engaged in overseeing the protection of evidence concerning the breaches at those

[10] Indeed, there are two actions before the Court in which FEMA has been named and upon full disclosure of the Court's position, it chose not to seek recusal.

sights. To disrupt this very necessary oversight might jeopardize the fair litigation of these cases.

In addition, the Court would note that the entire Fifth Circuit was affected to some degree by the flooding at issue. Indeed, the Fifth Circuit itself remained off-site longer than the Eastern District of Louisiana. Moreover, phone service and e-mail was disrupted circuit wide during the aftermath of a natural disaster.

The key distinguishing factor from the *Nicholls* case and the *In re Nettles* case, is that the "disaster" was limited to a single criminal act aimed at the judiciary. As such, the litigation that ensued was limited to the individual criminal trials of the alleged perpetrators. In contrast, the events that resulted from Hurricane Katrina have spawned hundreds of cases, all of which properly lie in this district. Plaintiffs are entitled to their day in court in the court of their choosing before a judge who is familiar with the locale and topography of this city. The practical dimension of disqualification militates that the duty to sit must prevail in this matter given the totality of the facts and circumstances of the minimal, if not ephemeral, impact of the flooding to the undersigned.

IT IS ORDERED that the Motion to Disqualify Judge filed by the Board of Commissioners for the Orleans Levee District (Doc. 61) and a Motion for Recusal filed by the Washington Group International, Inc. (Doc. 63) are **DENIED**.

New Orleans, Louisiana, this 4th day of May, 2016.

/s/ [Illegible]
STANWOOD R. DUVAL, JR.
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-30351

In Re: BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE, DISTRICT; WASHINGTON GROUP INTERNTIONAL [sic] INC.

Petitioners

.....

Petitions for Writ of Mandamus to the United States District Court for the Eastern District of Louisiana

.....

ON PETITIONS FOR REHEARING EN BANC

(Filed Jun. 21 2006)

Before SMITH, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:

(✓) Treating the Petitions for Rehearing En Banc as Motions for Reconsideration, the Motions for Reconsideration are DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petitions for Rehearing En Banc are DENIED.

( ) Treating the Petitions for Rehearing En Banc as Motions for Reconsideration, the Motions for Reconsideration are DENIED. The court having been polled at the

request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petitions for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ [illegible]
United States Circuit Judge

REHG-6a

Judges Jolly, Wiener, Dennis, and Clement did not participate in the consideration of rehearings en banc.

IN RE BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT

Parties

O'Dwyer, et al. v. U.S.A., et al., E.D. La., Civ. No. 05-04181

1. Maureen O'Dwyer — PLAINTIFF
2. Harold Joseph Gagnet
3. Sally Egerton Richards
4. Shaun Porter
   Terminated: 9/30/05
5. Stephanie Porter
   doing business as Interior Specialists
6. Shelia Jordan Jordan
7. Charles Edward Jordan
8. Wayne M. Jones
9. Gloria Agnes Grissin (sic) by 3rd Supp. Gloria Agnes Griffin *individually and administratrix of the succession of her brother Stephen Williams and on behalf of any and all heirs, survivors, relatives and beneficiaries of the deceased*
10. Leticia Brown
11. Jo Anna McLean
12. Lee Davidson McLean, III
13. Louis Joseph O'Dwyer, Jr.
14. Maurleen M. O'Dwyer
15. Aaron Jacob O'Dwyer
16. Henry Grady Hardy, Jr.
17. Letizia Hardy

18. Jane Veronica Hardy
19. Brian Southerland Hardy
20. Martin Ramos
21. Leslie Ehret
22. Anthony Phillip Henderson
23. Frances Y. Bellerino
24. Louise J. Young
25. Edward R. Young
26. Veronica F. Young
doing business as Floor Crafters Wood
27. M.D. Joseph Rauchwerk
28. Cheryl Sweat Rauchwerk
29. Marilyn Von Schmidt
30. M.D. Susan G. Jeanfreau
31. M.D. Wallace E. Jeanfreau
32. M.D. Robert J. Jeanfreau
33. Jerry Victor Jacob
34. Gloria Pohlman Hecker
35. Joseph W. Hecker
36. Ashton R. O'Dwyer, Jr.
37. Shane E. Porter
doing business as Interior Specialties LLC
38. Kathryn Frank (sic) Katherine by First Supplemental and Amended
39. Madeline Alice Guide
40. Nicholas S. Lindner
41. Arthur Tracy Abel

42. Kathleen C. Abel
43. Joanne Landrieu Curren
44. John Curren
45. Andre Trevigne Fowler
46. Kitty B. Hoffman
47. Stephen Christopher Jeandron
48. Joseph Landrieu
49. Phyllis Landrieu
50. Craig Anthony Miller
51. Tyrone Anthony Alexander
52. Penny Anderson
53. Michael Cormick
54. Betty Francis
55. Sherman Griffin
56. Delia La Barre
57. Lester McGee
58. Calie Newell
59. George Schmidt
doing business as George Schmidt gallery
60. John Wesley Stewart, Jr.
61. Gregory Cormick
62. Ashley O'Dwyer Day
63. Jeffrey Baker Day
64. Brandon Edward Mary
terminated 2/1/06
65. Melissa Schon Mary
terminated 2/1/06

66. Sandra Meyers
67. Harold Alexander
68. Felix Augustin
69. Pauline Augustin
70. Vonola Avist
71. Cynthia Bell
72. Dana Bell
73. Gloria Mae Bell
74. Hitchai Bryant
75. Nicole Bryant
76. Rhona Causey
77. Catherine Collins
78. John Collins
79. Jonell Collins
80. Sherene Collins
81. Simeko Collins
82. Jerry Cormick
83. Lauren Dabney
84. Kevin Daliet
85. Norcille Daliet
86. Carroll Denesse
87. Lucien Denesse
88. Donald Ellis
89. Kim Ellis
90. Bobbie Evans
91. Audrey Gray

92. Lucille Gray

93. Issac Hayes

94. Mary Johnson

95. Mary Noela Johnson

96. Wayne Anthony Johnson

97. Winnette Lang
on her own behalf and on behalf of her minor children, Kavon Lang and Lashanice Jones

98. Ann Lawless

99. Carlton Lawless
Detective

100. Gene Lee

101. Ivin Lee

102. Lynn Lee

103. Lydia Leon

104. Jimmie Martin

105. Ashley Navarre

106. Doreine Navarre

107. Melvin Navarre

108. Harry Nobles

109. Alma Sanders

110. Barbara Sanders

111. Gilda Skinner

112. Irinika Skinner

113. Irvin Skinner

114. Brandon Smith

115. Michele Armour

116. Mitchell Armour

117. Mitchell Armour, III

118. Monique Armour

119. Nina Baughn
on her own behalf and on behalf of her minor children, Karim Kemp, Karen Kemp, Erica Kemp

120. Joshua Billon
and his spouse, Monica Billon, on their behalf and on behalf of their minor children, Isaiah Billon, Monica Billon

121. Samuel Bourne

122. Nicole Bryan

123. Blair Bundy

124. Dawn Bundy
on her own behalf and on behalf of her minor children, Emanual Bundy, Shekinah Bundy, Jane Bundy, Blair Bundy, Jr.

125. Jill Bundy

126. Sylvia Byrd

127. William Byrd

128. Insuk Caro
doing business as Wig Fashions and Apolostic Christian Bookstore

129. Kerry Carter

130. Vanessa Carter

131. Betty Christy

132. De-Fean Christy

133. Collins
on her own behalf and on behalf of her son, Jacobi Glover

134. Janice Collins
on her own behalf and on behalf of her son, John Henry Collins

135. John Collins

136. Sherlene Collins

137. Alton J. Crowden
on his own behalf and on behalf of his minor children, Cameron Crowden, Kellie Crowden

138. Patricia Granger
on her own behalf & on behalf of her daughter, Tomika Edwards

139. Patricia Green

140. Augustine Greenwood

141. Rosemary Greenwood
on her own behalf and on behalf of her children, Yasmine & Jasemine Greenwood

142. Charmeine Jefferson
on her own behalf & on behalf of her children, Lemor James, Ariel James, Yolanda Jefferson, Erika Thornton

143. Bobby Johnson

144. Tanaka Johnson

145. Erica Kemp

146. Karen Kemp

147. Chris McCormick

148. Glenda Medina

149. Denisha Morgan

150. Linda Morgan

151. Lokea Morgan

152. Ashley Navarre

153. Michele Elizabeth Omes

154. Shana Patterson

155. Jim Richard Pazos

156. Keana Quinn

157. Darylynn Ramsey

158. Julie Ramsey
on her own behalf and on behalf of her minor children, Dalisha Ramsey and Charli Ramsey

159. Niketsa Ramsey
on her own behalf and on behalf of her minor children, Desmonisha Ramsey, Kenyel Rochon and Desmond Ramsey

160. Laura Recasner
on her own behalf & on behalf of her children, Dajohon Recasner, Kurshell Racasner, Charleston Recasner, Agnes Recasner

161. Charmaine Rhome

162. Robert Rhone

163. La-Shawn D. Robinson

164. Avery Scott

165. Byrne Sherwood

166. Jačqueline Smith

167. James Smith, Jr.

168. Joshua Smith

169. Shelia Smith

170. Judy Starks

171. Marsha Taylor

172. Shanika Taylor

173. Cynthia Tibbet
on her own behalf and on behalf of her children, Brittany Tibbet, Sidney Tibbet, Chelesa Tibbet

174. Janice Tollins
on her own behalf and on behalf of her minor son, John Tollins

175. Mercedes Ann Washington

176. Charles Williams

177. Arthur Tracy Abel

178. Kathleen C. Abel

179. John Curren

180. Joanne Landrieu Curren

181. Phyllis Landrieu

182. Joseph Landrieu

183. Kitty B. Hoffman

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185. Sephen Christopher Jeandron

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196. Sherman Griffin
197. Sandra Meyers
198. Gregory Cormick
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200. Melissa Schon Mary
201. Jeffrey Baker Day
202. Ashley O'Dwyer Day
203. Harold Alexander
204. Vonola Avist
205. Dana Bell
206. Gloria Mae Bell
207. Hitchai Bryant
208. Nicole Bryant
209. John Collins
210. Jonell Collins
211. Catherine Collins
212. Sherene Collins
213. Simeko Collins
214. Jerry Cormick
215. Lauren Dabney
216. Kevin Daliet
217. Norcille Daliet
218. Donald Ellis
219. Kim Ellis
220. Bobbie Evans

221. Audrey Gray
222. Lucille Gray
223. Issac Hayes
224. Mary Johnson
225. Mary Noela Johnson
226. Wayne Anthony Johnson
227. Ann Lawless
228. Detective Carlton Lawless
229. Gene Lee
230. Ivin Lee
231. Lynn Lee
232. Jimmie Martin
233. Harry Nobles
234. Alma Sanders
235. Barbara Sanders
236. Albertha Skinner
237. Gilda Skinner
238. Irinika Skinner
239. Irvin Skinner
240. Brandon Smith
241. Felix Augustin
242. Pauline Augustin
243. Cynthia Bell
244. Rhona Causey
245. Ferdinand Leon
246. Lydia Leon

247. Caroll Denesse

248. Lucien Denesse

249. Ashley Navarre

250. Doreine Navarre

251. Melvin Navarre

252. Sylvia Byrd

253. William Byrd

254. John Collins

255. Sherlene Collins

256. Jamie Collins
on her own behalf and on behalf of her son, Jacobi Glover

257. Mitchell Armour

258. Vanessa Carter

259. Kerry Carter

260. Joshua Billon
on her own behalf and on behalf of her minor children, Isaiah Billon and Monica Billon

261. Monica Billon
on her own behalf and on behalf of her minor children, Isaiah Billon and Monica Billon

262. Betty Christy

263. De-Fean Christy

264. La-Shawn D. Robinson

265. Chris McCormick

266. Michele Armour

267. Monique Armour

268. Mitchell Armour III

269. Augustine Greenwood
270. Byrne Sherwood
271. Linda Morgan
272. Lokea Morgan
273. Denisha Morgan
274. Shelia Smith
275. Jacqueline Smith
276. James Smith, Jr.
277. Patricia Green
278. Tanaka Johnson
279. Bobby Johnson
280. Charles Williams
281. Charmaine Rhome
282. Judy Starks
283. Shanika Taylor
284. Marsha Taylor
285. Erica Kemp
286. Karen Kemp
287. Samuel Bourne
288. Nicole Bryan
289. Ashley Navarre
290. Shana Patterson
291. [illegible]na Quinn
292. Darylynn Ramsey
293. Robert Thone
294. Joshua Smith

295. Glenda Medina

296. Michele Elizabeth Omes

297. Jim Richard Pazos

298. Avery Scott

299. Frank Duncan Strachan, III

300. Joshua Dillon
and his spouse on his behalf and on behalf of his minor children, Isiah Dillion and Monica Pollard

301. Monica Dillon
on her own behalf and on behalf of their minor children, Isaiah Dillon and Monica Pollard

302. Donald G. Deaton

303. Pamela A. Morgan

304. Frank Butler, Jr.,
on his own behalf and on behalf of his minor children, Frank Butler, III, Charles Butler and Tachmonite Butler

305. Lorenzo Butler

306. Alonzo W. Butler
and his spouse, on his behalf and on behalf of his minor children, Alonzo W. Butler, Jr., Jasmyn Butler and Rashad Butler

307. Laquinta Butler
on their own behalfs and on behalf of their minor children, Alonzo W. Butler, Jr. Jasmyn Butler, and Rashaad Butler

308. Rita Bailey

309. Tony Green

310. Lina Vaughn

311. William Byrd

312. Sylvia Byrd

313. Ruth Harris

314. Clifford Harris

315. Jonathan Washington

316. Vicky Michel

317. Simon Kleindorf

318. Bertha Kleindorf

319. David Kleindorf

320. Connie Kleindorf

321. Troylyn Washington
on her own behalf and on behalf of her minor child, Dasia Washington

322. Roy Junior Washington

323. Tony Green

324. Eva McGee

325. Levi Johnson

326. Patricia Johnson

327. Lequecia Bunn
on her own behalf and on behalf of her minor child, Jada Gibson

328. Imelda Johnson

329. Michael Johnson

330. Mulkina Coates
on her own behalf and on behalf of her minor children, Keshina Coates and Malik Coates

331. Benjamin Morgan

332. Chandra Maxon
on her own behalf and on behalf of her minor children, Byron Maxon, Darianne Maxon, Janea Maxon

333. Willie Maxon

334. Devante Maxon, and Chandray Maxon

335. Marylyn Maxon
on her own behalf and on behalf of her minor children, Shancanacia Maxon, Ravanell Maxon, and Robert Maxon

336. Lois Torregano

337. Loisha Breaux
on her own behalf and on behalf of her minor children, Loishell Williams and Mikayla Breaux

338. Vanesa Davis

339. James Cook

340. Daniel Davis

341. Joan A. Miller

342. Linda Boyd
on her own behalf and on behalf of her minor children, Caress Boyd, and Charles Boyd

343. Elijah Washington

344. Keineisha Richard
on her own behalf and on behalf of her minor children, Marlon Richard, Marcel Richard, and Emyjah Washington

345. Anthony Barnes

346. Janice Barnes

347. Shena Barnes

348. Falish Barnes

349. Melanie Barnes

350. Darryle Lee Johnson, Sr.

351. Tameko Benjamin
on her own behalf and on behalf of her minor children, Jovana Benjamin, Darione Benjamin, Darryle Lee Johnson, Jr., and Darielle Benjamin

352. Delilah Milton

353. Kimmie Ferdinand

354. Ashley Ferdinand

355. Cornell Batiste

356. James Hollins
on their his own behalf and on behalf of his minor children, Semaj Hollins, and Jamaya Hollins

357. Lakvina Coates
on their own behalf and on behalf of their minor children, Semaj Hollins, and Jamaya Hollins

358. Tamaya Coates

359. Maria Washington
on her own behalf and on behalf of her minor children, Janisha Washington, Andrew Washington, Charles Washington, and Mekhi Washington

360. Andrew Hill

361. Leslie Johnson
on her own behalf and on behalf of her minor child, Jamay Johnson

362. Lakeisha Fernandez
on her own behalf and on behalf of her minor child, Eddie McGee, Jr.

363. Lessie Johnson

364. Zelda McKendall

365. Ellsworth P. McKendall

366. Kimberly McKendall

367. Michael McKendall

368. Russell Gardner

369. Lisa Byrd
on her own behalf and on behalf of her minor child, Sadzisya Byrd

370. Michael Anthony Snipes, Jr.

371. JoAnn Snipes

372. Michael Anthony Snipes, Sr.

373. Garry Bougeois

374. Cheryl Bernard

375. Johndra Patterson

376. Terrill Morris

377. Dianne Thompson

378. Michael Thompson

379. Victor Moore
on his own behalf and on behalf of his minor children, Victor Lyn Morgan, Pamelor Morgan, Vicknesha Morgan, and Victoria Moore

406. Pamelyn Morgan Moore
on her own behalf and on behalf of her minor children, Victor Lyn Morgan, Pamelor Morgan, Vicknesha Morgan, and Victoria Moore

407. Ruby Ann Washington
on her own behalf and on behalf of her minor children, Shaune Bakewell, and LaShay Johnson

408. David Bealer

409. Roseann Bealer

410. Stacy Bealer

411. Roland Rodrigue

412. Cheryl Rodrigue

413. John Elmer Smith

414. Wanda Jean Smith

415. Robin Marie Smith

416. Linda R. Breaux

417. Larry Robert Reinhardt

418. Rosa A. Reinhardt

419. Robert E. Stone

420. Linda Dufrene

421. Maria Thecla Eugenia Albers,
doing business as New Orleans Montessori School, Inc.

422. Josephine J. Dupree-Dean

423. Herbert C. Jackson

424. Gail Brown
on her own behalf and on behalf of her minor children, Aaron Pulliam and Brandon Pulliam

425. Myron Mack

426. Sheila Lewis

427. Pernell Lewis

428. Ashanti Lewis

429. Natasha Leevis
on her own behalf and on behalf of her minor children, Natiasha Lewis and Shaila Lewis

430. Christopher Patterson
on her own behalf and on behalf of her minor children, Christopher Edward Patterson, Jr. and Chrisha Patterson

431. Linda Johnson
on her own behalf and on behalf of her minor children, Christopher Edward Patterson, Jr. and Chrisha Patterson

432. Shanipa Patterson
on her own behalf and on behalf of her minor children, Sherman Singleton, Shermont Singleton and Reggineka Rice

433. Sharie Johnson

434. Rachel Johnson

435. Joan Bundy

436. Michelle Renee' Alexander

437. Rodney James
on his own behalf and on behalf of his minor children, Rodney James, Jr. and Alexis James

438. Robert Young

439. Cornelius Young

440. Shactha Williams

441. Rose Marie Young

442. Tykesha Arington
on her own behalf and on behalf of her minor children, Charles Arington, Tyriel Arington and Braione Arington

443. Lloyd Joseph

444. Juanita Arington

445. PTC Petroleum & Industrial Supplies, Inc.

446. Ronald D. Pitisci

447. Kathleen Pitisci

448. Gerald Anthony Picquet

449. Lynn Picquet

450. Darnell Williams
on her own behalf and on behalf of her minor child, Chad Williams

451. Anthony Barnes

452. Janice Barnes

453. Falisha Barnes

454. Shena Barnes

455. Melanie Barnes

456. Glennis Livas
on her own behalf and on behalf of her minor child, William E. Patterson

457. Malika Batiste
on her own behalf and on behalf of her minor niece and nephew, Caliyah Porter and Aaron Batiste

458. Christopher Arrington

459. Noema Arrington
on her own behalf and on behalf of her minor children, Eric Arrington and Aaron Arrington

460. Phillip Martin

461. Paulette Biggs
on her own behalf and on behalf of her minor child, Arkasia McFarland

462. Aldo Gofredo Hernandez, Sr.
and his spouse, Arelia Carlota Hernandez,

463. Arelia Carlota Hernandez,
on her own behalf and on behalf of her minor child, Emmanuel Gofredo Hernandez

464. Aldo Gofredo Hernandez, Jr.

465. Lloyd Loup III

466. Alaina Loup

467. Kenneth Arcement

468. Marlene Arcement

469. Shanika Taylor

470. Marsha Taylor

471. Erica Kemp

472. Latonya Caldwell
on her own behalf and on behalf of her minor children, Onyell Caldwell and Charles Dears

473. Larose Taylor

474. Stephan Sawyer

475. Ms. Eprsy Livas

476. Brandon Livas

477. Clifford Coates

478. Tammie Chattman
on her own behalf and on behalf of her minor children, Rudarion Chattman, Randel Chattman, and Joseph Chattman

479. Linzie Brown

480. Emargie C. Brumfield

481. Leonard Brumfield

482. Brandon Carr

483. Jessie Arbuthnot

484. Mary P. Mingo

485. Rachel Goldsmith

486. Gayle LeBlanc

487. Michael LeBlanc
on her own behalf and on behalf of their minor child, Mika Jane LeBlanc

488. Larice Taylor LeBlanc
on her own behalf and on behalf of their minor child, Mika Jane LeBlanc

489. Kim Gaines
on her own behalf and on behalf of her minor children or grandchildren, Jamechia Smith, and Diamond Beam

490. Michael Gaines

491. William B. English, Jr.

492. Rosaria English

493. Hazel McGuire

494. Mary H. Johnson

495. Jerry Matthews

496. Dennis Jones, Jr.

497. Raquel Roth
on her own behalf and on behalf of her minor children, Dennis Jones, III and Kellie Ann Jones

498. Linda Roth

499. Toya Roth
on her own behalf and on behalf of her minor children, Jerrell White and Terrell Roth

500. Courtney Little
on her own behalf and on behalf of her minor children, Tezanne Allen, Rashad Little, and Fabian Earls, Jr.

501. Reynell Santee
on his own behalf and on behalf of his minor children, Ranisha Rayford, Wynell Rayford, and Reynell Rayford

502. Tawana Rayford
on her own behalf and on behalf of her minor children, Ranisha Rayford, Wynell Rayford, and Reynell Rayford

503. Darron Meyers

504. Troylyn Meyers
on her own behalf and on behalf of her minor children, Keiera Minor and Ashley Meyers, and on behalf of her grandchild, Daniah Williams

505. Phillip Lazard

506. Marguerite Lazard

507. Joel Frank

508. Juliet Johnson

509. Ronald Rome

510. Aunna Johnson
on her own behalf and on behalf of her minor children, Darryl Johnson and Carlos Johnson

511. John Washington

512. Bernadine Washington

513. Wanda Washington

514. Alexis Washington

515. Hazel Taylor

516. Christina Taylor

517. Sophia Taylor
on her own behalf and on behalf of her minor child, Alex Taylor

518. Yolanda Washington
on her own behalf and on behalf of her minor children, Alecia Washington, Alacia Washington and Tyrell Washington

519. Tyronne Washington

520. Bruce Washington

521. Larry Rowe

522. Dianne Santee

523. Toni Santee
on her own behalf and on behalf of her minor children, Paris Johnson, Traychell White and Kani Santee

524. Kelly Simon

525. Robert Santee

526. Diana Santee
on her own behalf and on behalf of her minor children, Timothy Santee, Marvin Santee, Ireal Santee, Tiffany Santee, Teianna Santee, Teriane Santee and Niecal Santee

527. Wilson Ricks

528. Brent Smith, Jr.
on his own behalf and on behalf of his minor child, Brent Smith, III

529. Michael Gaines

530. Kim Gaines
on her own behalf and on behalf of her minor children, Jamechia Smith and Diamond Beam

531. Shirley Simon
individually and as Administrix of the Succession of Richard Simon, deceased, and on behalf if any and all heirs, survivors, relatives and beneficiaries of the deceased, including the children Richard Simon, Jr.; Richanda Simon; Ashley Simon and Teddy Simon

532. Movella Wicker

533. Lawrence wicker

534. Pamela Maye

535. Pamela Williams

536. Robert Butler

537. Lonnie Taylor

538. Thomas Green

539. Louise Green
own her own behalf and on behalf of her minor child, Deviance Green

540. Gerald Green

541. Clayton Wicker

542. Ernest Wicker

543. Ron Wicker

544. Linda Wilson
on her own behalf and on behalf of her minor children, Brice Lee, Brittany Wilson

545. Brandon Wilson

546. Alvin Whitting, Jr.

547. Mamie White

548. Bobbie Davis

549. Clifford Baptiste

550. Marie Baptiste

551. Rudolph Dupart

552. Brenda Dupart

553. Carolyn Jones

554. Charlita Clark

on her own behalf and on behalf of her minor children, Tyrus Jamal Clark and Shedrick Clark

555. Larry M. Broyard, Sr.

556. Ossiemea Marchall
on her own behalf and on behalf of her minor child, Larry M. Broyard, Jr.

557. Agatha Broyard

558. Milous Magee III

559. Trakita Rattler
on her own behalf and on behalf of her minor children, Ta-Quita Rattler; Renelle Ratter; Marvin Rattler and Tirrell Rattler

560. Claudia Rattler

561. Latanya Renkin
on her own behalf and on behalf of her minor child, Jycal Renkin

562. Calvin Renkin

563. Christina Cherry

564. Cynthia Richardson
on her own behalf and on behalf of her minor nieces, Ajia Richardson and India Jackson

565. Nikie Richardson
on her own behalf and on behalf of her minor children, Nekia White and Kani Richardson

566.	Kela Johnson *on her own behalf and on behalf of the minor children, Curtis Johnson and Rahquan Johnson*	
567.	Eureka Richardson *on her own behalf and on behalf of her minor child, Thomas Enclorde*	
568.	Edwina Green	
569.	Antwine Deloney	
570.	Cleveland Mills	
571.	Joy Wicker	
572.	Tony Owens	
573.	Gregory Baptiste, Sr. *on their own behalfs and on behalf of their minor children, Gregory Baptiste, Jr and Jonathan Baptiste*	
574.	Lisa Baptiste *on their own behalfs and on behalf of their minor children, Gregory Baptiste, Jr and Jonathan Baptiste*	
575.	Devin Baptiste	
576.	Ellen Penny	
577.	Antoinette Theriot	
578.	Mark Owens	
579.	United States of America	Defendant
580.	Kathleen-Blanco	Defendant
581.	State of Louisiana	Defendant
582.	Ray Nagin *Terminated 1/6/06*	Defendant
583.	City of New Orleans	Defendant

584.	Eddie Compass *Terminated 1/6/06*	Defendant
585.	Eddie Jordan	Defendant
586.	Jim Huey	Defendant
587.	Orleans Parish Levee Board *Terminated 1/24/06*	Defendant
588.	Ray Nagin – New Orleans Sewerage and Water Board *Terminated 1/6/06*	Defendant
589.	Criminal Sheriff for the Parish	Defendant
590.	Clerk of Court, Parish of Orleans, Criminal District *Terminated 11/18/05*	
591.	Orleans Parish Sewerage and Water Board	Defendant
592.	Aaron Broussard *Terminated 3/28/06*	Defendant
593.	Jefferson Parish *Terminated 3/28/06*	
594.	Kimberly Wilson Butler	Defendant
595.	Eustis Engineering Company	Defendant
596.	Modjeski and Masters, Inc.	Defendant
597.	C. Ray Nagin	Defendant
598.	Edwin Compass, III	Defendant – no appearance of record
599.	Board of Commissioners for the Orleans Levee District	Defendant
600.	St. Paul Fire and Marine Insurance Company	Defendant

601.	Louisiana Department of Transportation	Defendant

Berthelot, et al v. Boh Bros. Construction Company, LLC, et al, USDC, EDLA No. 05-4182, Sec. "K", Mag. 2

1.	Colleen Berthelot, wife of/and	Plaintiff
2.	Jackie Berthelot	Plaintiff
3.	Heber Dunaway	Plaintiff
4.	Eric Anderson	Plaintiff
5.	Amy Janusa	Plaintiff
6.	Michael Janusa	Plaintiff
7.	B&K Construction Co., Inc.	Defendant
8.	Burk-Klienpeter, Inc.	Defendant
9.	C.R. Pitmann Construction Co., Inc.	Defendant
10.	Gulf Group, Inc. of Florida	Defendant
11.	James Construction Group, LLC	Defendant
12.	Miller Excavating, Inc.	Defendant
13.	Modejeski and Masters, Inc.	Defendant
14.	Pittman Construction Co. of LA, Inc.	Defendant
15.	Virginia Wrecking Co., Inc.	Defendant
16.	Washington Group International, Inc.	Defendant
17.	Board of Commissioners for the Orleans Levee District	Defendant
18.	City of New Orleans	Defendant
19.	Sewerage and Water Board	Defendant
20.	St. Paul Fire and Marine Insurance	Defendant
21.	Jefferson Parish	Defendant
22.	Aaron Broussard	Defendant

Harvey, et al v. Board of Commissioner for the Orleans Levee District, USDC, EDLA, No. 05-4568, Sec. "K" Mag.2

1.	Robert Harvey	Plaintiff
2.	Darleen Jacobs Levy	Plaintiff
3.	Susan Laurendine	Plaintiff
4.	William Laurendine	Plaintiff
5.	Board of Commissioners for the Orleans Levee District	Defendant

Vandanovich, et al v. Boh Bros. Construction Company, LLC, et al, USDC, EDLA, No. 05-5237

1.	Ann Vodanovich	Plaintiff
2.	Charlie Vodanovich	Plaintiff
3.	Cathy Carter	Plaintiff
4.	Regina Schoegel	Plaintiff
5.	Samuel Schoegel	Plaintiff
6.	Sean McCrossen	Plaintiff
7.	Boh. Bros. Construction Co., LLC	Defendant
8.	Washington Group International, Inc.	Defendant
9.	Virginia Wrecking Company, Inc.	Defendant
10.	Gulf Group, Inc. of Florida	Defendant
11.	C. R. Pitman Construction Co., Inc.	Defendant
12.	Pittman Construction Co. Of LA, Inc.	Defendant
13.	Burk-Kleinpeter, Inc.	Defendant
14.	Burk-Kleinpeter, LLC	Defendant
15.	B&K Construction Co., Inc.	Defendant
16.	Miller Excavating Services, Inc.	Defendant

17.	James Construction Group., LLC.	Defendant
18.	Board Commissioners for the Orleans Levee District	Defendant
19.	St. Paul Fire and Marine Insurance	Defendant
20.	Sewerage and Water Board of New Orleans	Defendant

Kirsch, et al. v. Boh Bros. Construction Co., L.L.C., et al., E.D. La., Civ. No. 05-6073

1.	David J. Kirsch	Plaintiff
2.	Ali Haghihi	Plaintiff
3.	Boh Bros. Construction Co., L.L.C.	Defendant
4.	Washington Group International, Inc.	Defendant
5.	Virginia Wrecking Company, Inc.	Defendant
6.	Thomas L. Gaudry, Jr.	Counsel for Virginia Wrecking Co., Inc.
7.	Gulf Group, Inc. of Florida	Defendant
8.	Modjeski and Masters, Inc.	Defendant
9.	C.R. Pittman Construction Co., Inc.	Defendant
10.	Pittman Construction Co. of LA, Inc.	Defendant
11.	Burk-Kleinpeter, Inc.	Defendant
12.	Burk-Kleinpeter, L.L.C.	Defendant
13.	B&K Construction Co., Inc.	Defendant
14.	Herman C. Hoffmann, Jr.	Counsel for B&K Construction Co., Inc.

15.	Betty F. Mullin	Counsel for B&K Construction Co., Inc.
16.	Miller Excavating Services, Inc.	Defendant
17.	James Construction Group, LLC	Defendant
18.	Board of Commissioners of the Orleans Levee District	Defendant
19.	St. Paul Fire and Marine Insurance	Defendant
20.	New Orleans City	Defendant
21.	Sewerage and Water Board of New Orleans	Defendant
22.	Louisiana Department of Transportation	Defendant

Ezell, et al. v. Boh Bros. Construction Co., et al., E.D. La., Civ. No. 05-06314

1.	Jim Ezell	Plaintiff
2.	Bonnie Ezell	Plaintiff
3.	Boh Bros. Construction Co., L.L.C.	Defendant
4.	Washington Group International, Inc.	Defendant
5.	Virginia Wrecking Company, Inc.	Defendant
6.	Gulf Group, Inc. of Florida	Defendant
8.	Modjeski and Masters, Inc.	Defendant
9.	Modjeski and Masters, Inc.	Defendant
10.	C.R. Pittman Construction Co., Inc.	Defendant
11.	Burk-Kleinpeter, Inc.	Defendant
12.	Burk-Kleinpeter, LLC	Defendant
13.	B&K Construction Co., Inc.	Defendant

14.	Miller Excavating Services, Inc.	Defendant
15.	James Construction Group, LLC	Defendant
16.	Board of Commissioners of the Orleans Levee District	Defendant
17.	St. Paul Fire and Marine Insurance Co.	Defendant
18.	New Orleans City	Defendant
19.	Sewerage and Water Board of New Orleans	Defendant
20.	Eustis Engineering Company, Inc.	Defendant
21.	Sewerage and Water Board of New Orleans	Defendant

Vanderbrook, et al. v. State Farm Fire and Casualty Co., et al., E.D. La., Civ. No. 05-06323

1.	Richard Vanderbrook	Plaintiff
2.	Mary Jane Silva	Plaintiff
3.	James Capella	Plaintiff
4.	Sophia Granier	Plaintiff
5.	Jack Capella (as the Executor of the Succession of Lilian Capella)	Plaintiff
6.	Gregor Jackson	Plaintiff
7.	Peter Ascani, III	Plaintiff
8.	Robert G. Harvey, Sr.	Plaintiff
9.	State Farm Fire and Casualty Co.	Defendant
10.	Kemper Insurance Co. (TERMINATED)	Defendant
11.	Hartford Insurance Co. (TERMINATED)	Defendant
12.	Travelers Insurance Co.	Defendant
13.	Hanover Insurance Co.	Defendant

14.	St. Paul Insurance Co. (TERMINATED)	Defendant
15.	Board of Commissioners of the Orleans Levee District	Defendant
16.	Hartford Insurance Company of the Midwest	Defendant
17.	Unitrin Preferred Ins. Co.	Defendant

Brown, et al. v. Boh Bros. Construction Co., L.L.C., et al., E.D. La. Civ. No. 05-6324

1.	David M. Brown, Sr.	Plaintiff
2.	Kim M. Lamerson	Plaintiff
3.	Dorothy Andry	Plaintiff
4.	Beverly Evans	Plaintiff
5.	Boh Bros. Construction Co., L.L.C.	Defendant
6.	Washington Group International, Inc.	Defendant
7.	Virginia Wrecking Co., Inc.	Defendant
8.	Gulf Group, Inc. of Florida	Defendant
9.	Modjeski and Masters, Inc.	Defendant
10.	C.R. Pittman Const. Co., Inc.	Defendant
11.	Pittman Const. Co. of LA, Inc.	Defendant
12.	Burk-Kleinpeter, Inc.	Defendant
13.	Burk-Kleinpeter, LLC	Defendant
14.	B&K Const. Co., Inc.	Defendant
15.	Miller Excavating Services, Inc.	Defendant
16.	James Const. Group, LLC	Defendant
17.	Board of Levee Commissioners of the Orleans Levee District	Defendant
18.	St. Paul Fire and Marine Ins. Co.	Defendant

19.	New Orleans City	Defendant
20.	Sewerage and Water Board	Defendant

LeBlanc, et al. v. Boh Bros. Construction Co., L.L.C., et al., E.D. La., Civ. No. 05-6327

1.	Beth A. LeBlanc	Plaintiff
2.	Alan West	Plaintiff
3.	Boh Bros. Construction Co., L.L.C.	Defendant
4.	Washington Group International, Inc.	Defendant
5.	Gulf Group, Inc. of Florida	Defendant
6.	Modjeski and Masters, Inc.	Defendant
7.	Pittman Construction Company, Inc.	Defendant
8.	Burk-Kleinpeter, Inc.	Defendant
9.	Burk-Kleinpeter, LLC	Defendant
10.	B&K Construction Company, Inc.	Defendant
11.	Miller Excavating Services, Inc.	Defendant
12.	James Construction Group, LLC	Defendant
13.	Board of Commissioners of the Orleans Levee District	Defendant
14.	St. Paul Fire and Marine Insurance Co.	Defendant
15.	The City of New Orleans	Defendant
16.	Sewerage and Water Board of New Orleans	Defendant
17.	Eustis Engineering Co., Inc.	Defendant

Armstead, et al. v. Nagin, et al., E.D. La., Civ. No. 05-6438

1.	Milton Armstead	Plaintiff
2	Mayda R. Armstead	Plaintiff

3.	C. Ray Nagin, Mayor (individual and official capacity)	Defendant
4.	Orleans Levee Board (TERMINATED)	Defendant
5.	Kathleen-Blanco (sic), Governor (Individual and official capacity)	Defendant
6.	George W. Bush, President (Individual and official capacity)	Defendant
7.	Federal Emergency Management Agency	Defendant
8.	Board of Commissioners of the Orleans Levee District	Defendant

Tauzin, et al. v. Board of Commissioners of the Orleans Levee District, et al., E.D. La., Civ. No. 06-00020

1.	Julie E. Tauzin	Plaintiff
2.	Paulette L. Heldner	Plaintiff
3.	John Michael Holahan	Plaintiff
4.	Riverbend Fine Wines, Inc.	Plaintiff
5.	Michelle M. Zornes	Plaintiff
6.	Board of Commissioners of the Orleans Parish Levee District	Defendant
7.	United States of America	Defendant
8.	Gulf Group, Inc. of Florida	Defendant
9.	Pittman Construction Co. of Louisiana, Inc.	Defendant
10.	Burk-Kleinpeter, Inc.	Defendant
11.	Burk-Kleinpeter, Inc.	Defendant
12.	B&K Construction Co., Inc.	Defendant
13.	Miller Excavating Services, Inc.	Defendant

14.	James Construction Group, Inc.	Defendant
15.	Eustis Engineering Co., Inc.	Defendant
16.	Modjeski and Masters, Inc.	Defendant
17.	Washington Group International, Inc.	Defendant
18.	Virginia Wrecking Co., Inc.	Defendant
19.	Boh Bros. Construction Co., L.L.C.	Defendant

Conlay, et al. v. Encompass Insurance Co., et al., E.D. La., Civ. No. 06-00151

1.	Bruce Conlay	Plaintiff
2.	Encompass Insurance Co.	Defendant
3.	Orleans Levee District (TERMINATED)	Defendant
4.	Board of Commissioners of the Orleans Levee District	Defendant

Rogers, et al. v. Encompass Insurance Co., et al., E.D. La., Civ. No. 06-00152

1.	Diane W. Rogers	Plaintiff
2.	Encompass Insurance Co.	Defendant
3.	Orleans Levee District (TERMINATED)	Defendant
4.	Board of Commissioners of the Orleans Levee District	Defendant

Baird, et al. v. Encompass Insurance Company, et al., E.D. La., Civ. No. 06-00153

1.	William R. Baird	Plaintiff
2.	Betty K. Baird	Plaintiff
3.	Encompass Insurance Co.	Defendant
4.	Orleans Levee District (TERMINATED)	Defendant
5.	Board of Commissioners of the Orleans Levee District	Defendant

Humphreys v. Encompass Insurance Company, et al., E.D. La., Civ. No. 06-00169

1.	Kelly A. Humphreys	Plaintiff
2.	Encompass Insurance Co.	Defendant
3.	Orleans Levee District (TERMINATED)	Defendant
4.	Board of Commissioners of the Orleans Levee District	Defendant

Bradley, et al. v. Pittman Construction Co., Inc., et al., E.D. La., Civ. No. 06-00225

1.	Frederick Bradley	Plaintiff
2.	Lawrence Rabin	Plaintiff
3.	Mark H. Samuels	Plaintiff
4.	Pittman Construction Co., Inc.	Defendant
5.	Board of Commissioners of the Orleans Levee District	Defendant

Finney, et al. v. Boh Brothers Construction Company, LLC, et al., E.D. La., 06-00886

1.	Mary Beth Finney	Plaintiff
2.	Kevin P. Finney	Plaintiff
3.	Jeanette Rubick	Plaintiff
4.	Robin M. D'Aunoy (individually and o/b/o minor son, Noah D'Aunoy)	Plaintiff
5.	Marty D'Aunoy (individually and o/b/o minor son, Noah D'Aunoy)	Plaintiff
6.	Jessica A. Newton (individually and o/b/o minor daughter Caitlyn Newton)	Plaintiff

7.	Jack A. Newton (individually and o/b/o minor daughter Caitlyn Newton)	Plaintiff
8.	Ann R. McGuinness	Plaintiff
9.	James C. McGuinness, Jr.	Plaintiff
10.	Ailree Y. Hutson	Plaintiff
11.	Boh Brothers Construction Co., LLC	Defendant
12.	Washington Group International, Inc.	Defendant
13.	Virginia Wrecking Company, Inc.	Defendant
14.	Gulf Group Inc., of Florida	Defendant
15.	Modjeski and Masters, Inc.	Defendant
16.	C.R. Pittman Construction Co., Inc.	Defendant
17.	Pittman Construction Co., of La., Inc.	Defendant
18.	Burk-Kleinpeter, Inc.	Defendant
19.	Burk-Kleinpter, LLC	Defendant
20.	B&K Construction Co., Inc.	Defendant
21.	Miller Excavating Services, Inc.	Defendant
22.	James Construction Group, L.L.C.	Defendant
23.	Board of Commissioners of the Orleans Levee District	Defendant
24.	St. Paul Fire & Marine Insurance Co.	Defendant
25.	New Orleans City	Defendant
26.	New Orleans Sewerage & Water Board	Defendant